

[3/4/05 revised draft]

[ENVIRONMENTAL COVENANT TEMPLATE]

**To be recorded with Deed  
Records - ORC § 317.08**

## **ENVIRONMENTAL COVENANT**

This Environmental Covenant is entered into by \_\_\_\_\_ (“Owner”) [name all Owners of the Property and add other “Holders,” if any] and the Ohio Environmental Protection Agency (“Ohio EPA”) pursuant to Ohio Revised Code (“ORC”) §§ 5301.80 to 5301.92 for the purpose of subjecting the Property to the activity and use limitations set forth herein.

*[Insert appropriate background information here, using available program-specific guidance. Identify the “site” or “facility.” Describe the “environmental response project,” see ORC § 5301.80(E), and identify the name and location of the administrative record for the project. See ORC § 5301.82(A)(8). See also ORC § 5301.82(B)(2) re: description of contamination on or underlying the property and its remedy, including the contaminants of concern, the pathways of exposure, limits on exposure, and the location and extent of the contamination.]*

Now therefore, Owner[s] [name all Owners of the Property and add other “Holders,” if any] and Ohio EPA agree to the following:

1. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to ORC §§ 5301.80 to 5301.92.

2. Property. This Environmental Covenant concerns [an approximately acre tract of real property; OR real property parcels numbered \_\_\_\_\_] owned by \_\_\_\_\_, located at \_\_\_\_\_, in \_\_\_\_\_ County, Ohio, and more particularly described in Exhibit A attached hereto and hereby incorporated by reference herein (“Property”).

3. Owner[s]. \_\_\_\_\_ (“Owner[s]”) [who resides; OR which is located] at \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ is the owner of the Property.

4. Holder[s]. Owner[s], whose address is listed above, [and \_\_\_\_\_ {who resides; OR which is located} at \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_] [is/are] the holder[s] of this Environmental Covenant.

5. Activity and Use Limitations. As part of the [closure of hazardous waste management units; corrective action at the Property; remedial action described in the Decision Document; voluntary action described in the NFA Letter; wetlands mitigation project; supplemental environmental project, etc.], Owner[s] hereby impose[s] and agree[s] to comply with the following activity and use limitations:

*[Insert the limitations appropriate for the Property. Several limitations may be appropriate as part of a remedial action or closure plan where cleanup to an unrestricted land use is not feasible. Each type of limitation must be considered on a Property-specific basis to determine which limitation or combination of limitations is suitable for the particular circumstances of the Property, based on the applicable program standards or cleanup goals, the nature of contamination, the affected media and the potential exposures. The types of limitations include:*

**land use** limitations (e.g., to limit duration and frequency of human exposure to surficial soils, surface water, or sediments.)

**ground water** limitations (e.g., to prevent exposure to contaminated ground water by prohibiting extraction or use of ground water, except for investigation or remediation thereof.)

**disturbance** limitations (e.g., to protect in-place remedial systems, to prevent exposures caused by any mixing of contaminated subsurface soils with “clean” surface soils, and to prevent contact with subsurface contamination during excavation.)

**construction** limitations (e.g., to prevent exposure to volatile emissions to indoor air from soil or ground water.)

**resource protection** limitations (e.g., to protect certain ecological features associated the Property . . . )]

[add the following, if appropriate: If any event or action by or on behalf of a person who owns an interest in or holds an encumbrance on the Property, identified in paragraph 11 below, constitutes a breach of the activity and use limitations, Owner or Transferee shall notify Ohio EPA within [thirty (30)] days of becoming aware of the event or action, and shall remedy the breach of the activity and use limitations within [sixty (60)] days of becoming aware of the event or action, or such other time frame as may be agreed to by the Owner or Transferee and Ohio EPA.]

6. Running with the Land. This Environmental Covenant shall be binding upon the Owner[s] and all assigns and successors in interest, including any Transferee, and shall run with the land, pursuant to ORC § 5301.85, subject to amendment or termination as set forth herein. The term "Transferee," as used in this Environmental Covenant, shall mean any future owner of any interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees.

7. Compliance Enforcement. Compliance with this Environmental Covenant may be enforced pursuant to ORC § 5301.91. Failure to timely enforce compliance with this Environmental Covenant or the activity and use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party's right to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall restrict the Director of Ohio EPA from exercising any authority under applicable law. *[VAP<sup>1</sup>: Pursuant to ORC § 3746.05, if the Property or any portion thereof is put to a use that does not comply with this Environmental Covenant, the covenant not to sue issued for the Property by the Director of Ohio EPA under ORC § 3746.12 is void on and after the date of the commencement of the noncomplying use.]*

8. Rights of Access. Owner[s] hereby grant[s] to Ohio EPA, its agents, contractors, and employees *[and any "Holders," the local government, etc.; see ORC §§ 5301.82(A)(6) and 5301.91(A)]* the right of access to the Property for implementation or enforcement of this Environmental Covenant.

9. Compliance Reporting. Owner[s] or any Transferee shall submit to Ohio EPA *[local government, "Holders" other than Owner]* on *[an annual]* basis written documentation verifying that the activity and use limitations remain in place and are being complied with.

10. Notice upon Conveyance. Each instrument hereafter conveying any interest in the Property or any portion of the Property shall contain a notice of the activity and use limitations set forth in this Environmental Covenant, and provide the recorded location of this Environmental Covenant. The notice shall be substantially in the following form:

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<sup>1</sup> *If the Property is the subject of a VAP no further action letter and request for a covenant not to sue, this language should be added to this paragraph of the Environmental Covenant.*

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED\_\_\_\_\_, 200\_, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE \_\_\_\_\_ COUNTY RECORDER ON \_\_\_\_\_, 200\_, IN [DOCUMENT \_\_\_\_\_, or BOOK\_\_\_\_, PAGE \_\_\_\_\_]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:  
*[Insert the language that describes the activity and use limitations exactly as it appears in the Environmental Covenant.]*

Owner[s] shall notify Ohio EPA *[and any "Holders" other than the Owner]* within *[ten (10)]* days after each conveyance of an interest in any portion of the Property. Owner's[s] notice shall include the name, address, *and telephone number* of the Transferee, a copy of the deed or other documentation evidencing the conveyance, and a survey map that shows the boundaries of the property being transferred.

11. Representations and Warranties. Owner[s] hereby represent[s] and warrant[s] to the other signatories hereto:

- A. that the Owner[s] is *[are]* the sole owner[s] of the Property;
- B. that the Owner[s] hold[s] fee simple title to the Property which is *[use either of the following, as appropriate:]*  
  
*free, clear and unencumbered; [or]*  
  
*subject to the interests or encumbrances identified in Exhibit B attached hereto and incorporated by reference herein;*
- C. that the Owner[s] has *[have]* the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder;
- D. that the Owner[s] has *[have]* identified all other persons that own an interest in or hold an encumbrance on the Property and notified such persons of the Owner's[s] intention to enter into this Environmental Covenant;*[and]*
- E. that this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or

instrument to which Owner[s] is [are] a party or by which Owner[s] may be bound or affected; [and] [add the following, if appropriate:]

- [F. *to the extent that any other interests in or encumbrances on the Property conflict with the activity and use limitations set forth in this Environmental Covenant, the persons who own such interests or hold such encumbrances have agreed to subordinate such interests or encumbrances to the Environmental Covenant, pursuant to ORC § 5301.86, and the subordination agreement(s) (attached hereto as Exhibit C; [or] recorded at \_\_\_\_\_).*]

12. Amendment or Termination. This Environmental Covenant may be amended or terminated by consent of all of the following: the Owner[s] or a Transferee; [other "Holders," if any;] and the Ohio EPA,<sup>1</sup> pursuant to ORC § 5301.90 and other applicable law. The term, "Amendment," as used in this Environmental Covenant, shall mean any changes to the Environmental Covenant, including the activity and use limitations set forth herein, or the elimination of one or more activity and use limitations when there is at least one limitation remaining. The term, "Termination," as used in this Environmental Covenant, shall mean the elimination of all activity and use limitations set forth herein and all other obligations under this Environmental Covenant.

This Environmental Covenant may be amended or terminated only by a written instrument duly executed by the Director of Ohio EPA and the Owner[s] or Transferee [and other "Holders," if any] of the Property or portion thereof, as applicable. Within thirty (30) days of signature by all requisite parties on any amendment or termination of this Environmental Covenant, the Owner[s] or Transferee shall file such instrument for recording with the \_\_\_\_\_ County Recorder's Office, and shall provide a file- and date-stamped copy of the recorded instrument to Ohio EPA.

*[alternative paragraph for resource protection limitations]*

13. Severability. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

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<sup>1</sup> See ORC § 5301.82 (B) (3), which allow for "limitations on amendment or termination."

14. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Ohio.

15. Recordation. Within [thirty (30)] days after the date of the final required signature upon this Environmental Covenant, Owner[s] shall file this Environmental Covenant for recording, in the same manner as a deed to the Property, with the \_\_\_\_\_ County Recorder's Office.

16. Effective Date. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a deed record for the Property with the \_\_\_\_\_ County Recorder.

17. Distribution of Environmental Covenant. The Owner[s] shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to: Ohio EPA; the [City, County, Township, Village] of \_\_\_\_\_; *[any "Holder," any lessee, each person who signed the Environmental Covenant, each person holding a recorded interest in the Property; and any other person designated by Ohio EPA; see ORC § 5301.83].*

18. Notice. Unless otherwise notified in writing by or on behalf of the current owner or Ohio EPA, any document or communication required by this Environmental Covenant shall be submitted to:

[title or position]  
Division of [\_\_\_\_\_]   
Ohio EPA  
P.O. Box 1049  
Columbus, Ohio 43216-1049

[title or position]  
[address]

The undersigned [representative of] Owner[s] *[and other "Holders," if any]* represent[s] and certif[y/ies] that *[he/she/they]* *[is/are]* authorized to execute this Environmental Covenant.

**IT IS SO AGREED:**

Date \_\_\_\_\_

Before me, a notary public, in and for said county and state, personally appeared Joseph P. Koncelik, the Director of Ohio EPA, who acknowledged to me that he did execute the foregoing instrument on behalf of Ohio EPA.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

[NAME OF HOLDER]

\_\_\_\_\_  
Signature of Holder

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Date

State of \_\_\_\_\_)

County of \_\_\_\_\_)

ss:

Before me, a notary public, in and for said county and state, personally appeared \_\_\_\_\_, a duly authorized representative of \_\_\_\_\_, who acknowledged to me that [he/she] did execute the foregoing instrument on behalf of \_\_\_\_\_.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

This instrument prepared by:

[name, address]